

39.

A cementitious composition consisting essentially of:

- (a) about 30 wt. % to about 75 wt. % calcium sulfate beta-hemihydrate;
- (b) about 10 wt. % to about 40 wt. % Portland cement;
- (c) about 4 wt. % to about 20 wt. % silica fume; and
- (d) about 1 wt. % to about 40 wt. % pozzolanic aggregate.

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cont

REMARKS

This is in response to the official action of December 26, 1996 wherein claims 1-11 and 17-27 were rejected under 35 U.S.C. §103 as obvious over Harris, in view of Francis et al., Kosmatka et al. and Jorgenson. The rejection is traversed and reconsideration is requested.

Claims 1, 17 and 23 have been amended. Claims 38 and 39 have been added. Claims 1-11, 17-27, and 38-39 are pending.

Page 11 of the specification has been amended to correct an error in Table II. The identification of the compositions disclosed columns two and three of the table should be switched. It is clear from the discussion of Example 2, starting at page 10, that the self-leveling floor composition #1 according to the invention included the FILLITE pozzolanic aggregate, while the composition #2 did not include a pozzolanic aggregate. Applicants respectfully request that this error be noted and that the numbers "1" and "2" at line 4 of page 11 be switched so as to correct the information in the table.

Independent claims 1, 17, and 23 have been amended to replace the word "comprising" with the phrase "consisting essentially of" in the preamble of

each of these claims. Support for this amendment is found in the claims as originally filed and in the examples of the application. The phrase "consisting essentially of" excludes additional unspecified ingredients which would affect the basic and novel characteristics of the product defined in the balance of the claim. *In re Garnero*, 162 U.S.P.Q. 221, 223 (CCPA 1969). It is respectfully submitted that none of the Harris, Francis et al., Kosmatka et al. and Jorgenson references teaches or suggests a composition according to the invention which consists essentially of calcium sulfate beta hemihydrate, Portland cement (or cement blend), silica fume, and pozzolanic aggregate. Therefore, reconsideration and withdrawal of the §103 rejection of the pending claims are requested.

New claims 38 and 39 also recite compositions "consisting essentially of" calcium sulfate beta hemihydrate, Portland cement, silica fume, and pozzolanic aggregate. These claims have been added to recite the component ranges disclosed in the parent applications. Therefore, for the reasons stated above, new claims 38 and 39 also should not be considered obvious in view of the art applied by the examiner.

It is respectfully submitted that this amendment is timely as it is being filed with a one-month extension of time request and requisite fee. Payment for the fee for adding two independent claims also is enclosed.

For the foregoing reasons, entry of the amendment to the specification and to claims 1, 17, and 23, the addition of new claims 38 and 39, reconsideration of the grounds for rejection of the pending claims, and allowance of all pending claims 1-11, 17-27, and 38-39 are solicited.

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

Applicant's Interview Summary Record

Applicants' attorney, Cynthia L. Schaller, conducted a telephonic interview with Examiner Michael Marcheschi with respect to the above-identified application on April 21, 1997.

During the interview, the application was generally discussed, and the undersigned suggested some possible amendments to claim 1 to clarify the inventive feature of the combination of silica fume and a pozzolanic aggregate. Examiner Marcheschi then suggested that the claims be amended to include "consisting essentially of" language. By this amendment, the examiner's suggestion has been followed.

Applicants' undersigned counsel sincerely thanks Examiner Marcheschi for taking the time to discuss this application and for the assistance he provided during the interview.

Respectfully submitted,

MARSHALL, O'TOOLE, GERSTEIN,
MURRAY & BORUN

By



Cynthia L. Schaller

Reg. No. 34,245

Attorneys for Applicants

6300 Sears Tower

233 South Wacker Drive

Chicago, Illinois 60606-6402

(312) 474-6300

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